SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 502.

THE UNITED STATES, PETITIONER,

vs.

E. LA MONTAGNE'S SONS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS.

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a United States Court of Customs Appeals.

No. 1399.

(Stamped: Office of the clerk, received June 12, 1915, Supreme Court, U. S.)

E. La Montagne's Sons, appellants, *vs.* The United States, appellee.

Transcript of record.

On appeal from the Board of United States General Appraisers.

(Stamped: Filed June 4, 1914, United States Court of Customs Appeals, Arthur B. Shelton, clerk.)

B. A. LEVETT,
Attorney for Appellants.

(Printed under the direction of the clerk.)

1 Petition.

U. S. Court of Customs Appeals. E. La Montagne's Sons, appellants, *vs.* The United States, appellee. Suit No. 1399.

To the Honorable the United States Court of Customs Appeals:

Your petitioners pray that the said Court of Customs Appeals review the questions of law and fact involved in the decision of the Board of U. S. General Appraisers made on the 16th day of March, 1914, as to the amount of duties assessed upon certain merchandise imported by them at the port of New York on the 6th day of October, 1913, per S. S. Minnehaha entry #276299, covered by protest number 729315/36044 and for that purpose your petitioners pray that an order be entered requiring the said Board of U. S. General Appraisers to return to this court the record and evidence taken by them, together with a certified statement of the facts involved in said matter and their decision thereon.

The particulars of the errors of law and fact involved in said decision of said Board of U. S. General Appraisers of which your petitioners complain are set forth in the following statement of errors:

1. In holding that the importer herein was not entitled to a discount of 5 per cent on the duty paid on the merchandise imported herein by virtue of paragraph J, Section IV, subsection 7, of the tariff act of October 3, 1913.

2. In not holding that the importer herein was entitled to a discount of 5 per centum on the duty paid on the merchandise imported herein by virtue of paragraph J, Section IV, subsection 7, and the treaty entered into between the United States of America and the Kingdom of Great Britain, dated July 3, 1815.

3. In holding that the favored-nation clause contained in the treaty entered into between the United States and the King-
2 dom of Great Brithin, dated July 3, 1815, is not brought into question by the allowance of a discount granted under paragraph J, Section IV, subsection 7 of the tariff act of October 3, 1913, to merchandise imported in American vessels.

4. In holding that the provisions contained in the treaty above mentioned by which each of the contracting parties thereto agrees not to levy higher duties upon the importations in vessels of the other country than if the same had been imported in vessels of its own country are not self-executing, and therefore not within the jurisdiction of the courts.

5. In holding that said provisions are opposed to the letter and spirit of the Constitution of the United States.

6. In holding that the provisions contained in said treaty in reference to duties upon merchandise are in contravention to the provisions contained in the Constitution of the United States, especially section 8, Subsection I.

7. In holding that the provisions contained in said treaty infringe upon and restrict the right of Congress to raise revenue.

8. In holding that the provisions contained in said treaty in reference to the payment of duty upon merchandise are in conflict with and violate the Constitution of the United States, which provides that all bills for raising revenue shall originate in the House of Representatives.

9. In overruling the protests herein.

10. In not sustaining the protests herein.

Dated New York, May 2, 1914.

E. LA MONTAGNE'S SONS,
Appellants.

By B. A. LEVEIT,
Attorney for Appellants, 17 State Street, New York City.

(Endorsed: United States Court of Customs Appeals. Filed May 11, 1914. Arthur B. Shelton, clerk.)

Mandate.

Mandate issued May 11, 1914. Arthur B. Shelton, clerk.

3 ## Bond.

Bond of Joseph W. Masters in the sum of fifty dollars, approved by R. M. Montgomery, presiding judge. Filed May 11, 1914.

Return of the board.

UNITED STATES OF AMERICA,
Board of United States General Appraisers, New York, ss:

E. La. Montagne's Sons, appellants, vs. The United States, appellee. Board's protest No. 729315. Collector's No. 36044. Suit No. 1399.

The petitioner above named, having applied to the United States Court of Customs Appeals for a review of the questions of law and fact involved in a decision of the Board of United States General Appraisers in the above case, and the said court having by order, dated the 11th day of May, 1914, required the board to transmit to said court, the record, evidence, exhibits, and samples, together with a certified statement of the facts involved in the case and its decision thereon:

Now therefore, pursuant to said order, the Board of United States General Appraisers does hereby transmit to said court the record, evidence, exhibits, and samples in said case, together with a certified statement of the facts involved in the case and also its decision thereon.

This return specifically comprises the following:

1. The protest in question with the report of the collector of customs thereon;
2. Stipulation of counsel upon which the protest was submitted;
3. A copy of the board's decision in question abstract 35154 (T. D. 34307).

Witness the Honorable Jerry B. Sullivan, president of the board, this 25th day of May, A. D. 1914.

[SEAL.] O. D. MADGE, *Chief Clerk.*

(G. V. O. Five per cent discount—English vessels.)

4 Protest 729315/36044.

NEW YORK, *December 19, 1913.*

Please send all notices relating to this protest to Masters & Levett, 17 State Street, New York City.

Hon. Collector of Customs, Port of New York.

SIR: We hereby protest against your liquidation and assessment of duty on all merchandise imported by us in the vessel and on the date named below, and covered by the entry below numbered, on the ground that in making such assessment you have illegally and in violation of the law refused or neglected to allow a discount of five per cent of the duties.

We claim that in the liquidation and assessment of duties on such merchandise a discount of five per cent of the duty should be allowed under and by virtue of paragraph J, section IV, subsection 7 of the act of October 3, 1913, and the terms of the treaty or treaties concluded between the United States and the nation or country from which such merchandise was exported, or under the laws of which

the vessel in which such merchandise was imported was registered. We particularly claim such discount of five per cent of the duties by virtue of said paragraph J, section IV, subsection 7 of said act, and the treaty entered into between the United States and the Kingdom of Great Britain dated July 3, 1815, and proclaimed December 22, 1815, especially under article 2 of said treaty.

We also protest against the payment of all duties not legally chargeable upon said importations, and pay the amount exacted under duress and compulsion to obtain and retain peaceable possession of the goods, holding you and the Government responsible for its return.

E. LA MONTAGNE'S SONS,
By MASTERS & LEVETT,
Attorneys.

Entry No. 276299. Bond No. 79680. Vessel, Minnehaha. Date of entry, Oct. 6/13. Date of liquidation, Nov. 20/13. Marks and Nos. — and others as per invoice and entry.

5 (Endorsed: Customhouse, New York. Received Dec. 19, 1913.)

Report of the collector.

JAN. 21, 1914.

Respectfully referred to the Board of U. S. General Appraisers for decision.

Duty was assessed in accordance with the appraiser's return on the invoice at the appropriate rate applicable under the provisions of the act of October 3, 1913, without any discount being allowed or deduction made on account of the vessel's registry. Note T. D. 33847.

The protest was lodged and fee paid within the stautory time.

DUDLEY FIELD MALONE, *Collector.*

Stipulation.

Before Board No. 3. U. S. General Appraisers. In the matter of protest 729315 of E. La Montagne's Sons, on discount of duty.

It is hereby stipulated and agreed that the merchandise covered by this protest consists of gin, the product of England, which was regularly imported into the United States in the S. S. "Minnehaha," and that said steamer is of English registry; and that the facts appearing in other stipulations on this subject, now before the board, may be considered as in this stipulation, so far as they are relevant.

The protest is submitted on this stipulation.

WM. L. WEMPLE,
Asst. Attorney General, Attorney for the U. S.
MASTERS & LEVETT,
Attorneys for the Importers, 17 State Street, New York City.

Dated NEW YORK, *March 11th, 1914.*

(Endorsed: U. S. Gen. Apprs. Received March 11, 1914.)

6 Decision of the board.

BOARD OF UNITED STATES GENERAL APPRAISERS,
New York, March 16, 1914.

In the matter of protest 729315/36044 of E. La Montagne's Sons against the assessment of duty by the collector of customs at the port of New York. Before Board 3.

WAITE, *General Appraiser:* This protest has been submitted upon stipulation between counsel for the Government and counsel for the importers to the effect that the merchandise consists of gin, the product of England, which was regularly imported into the United States in the S. S. "Minnehaha," and that said steamer is of English registry. The claim in the protest is that in the assessment of duty upon these goods a discount of 5 per cent should be allowed by virtue of paragraph J, Section IV, subsection 7 of the act of October 3, 1913, and the treaty between the United States and Great Britain.

The protest is overruled on authority of G. A. 7540 (T. D. 34246).

BYRON S. WAITE,
H. M. SOMERVILLE,
Board of U. S. General Appraisers.

(Endorsed: United States Court of Customs Appeals. Filed May 26, 1914. Arthur B. Shelton, clerk.)

7 United States Court of Customs Appeals.

E. LA MONTAGNE'S SONS
v.
THE UNITED STATES. } No. 1399.

Certificate of the Attorney General.

In pursuance of the act entitled "An act to amend section 195 of the act entitled 'An act to codify, revise, and amend the laws relating to the judiciary, approved March 3, 1911,'" approved August 22, 1914, I, Thomas Watt Gregory, Attorney General of the United States, do certify that the case now pending and undecided in the Court of Customs Appeals, entitled "No. 1399, E. La Montague's Sons v. The United States," is of such importance as to render expedient its review by the Supreme Court.

Given under my hand this 29th day of Sept., 1914.

T. W. GREGORY,
Attorney General.

Filed October 2, 1914. United States Court of Customs Appeals. Arthur B. Shelton, clerk.

8 United States Court of Customs Appeals.

E. LA MONTAGNE'S SONS, APPELLANT,
vs.
THE UNITED STATES, APPELLEE.
No. 1399.

The above-entitled appeal was argued by counsel and taken under advisement by the court on November 10, 11, and 12, 1914.

United States Court of Customs Appeals.

Tuesday, May 25, 1915.

At a session of said court continued and held at the city of Washington, pursuant to adjournment, on this 25th day of May, A. D. 1915.

Present, the Honorable Robert M. Montgomery, presiding judge, and the Honorables James F. Smith, Orion M. Barber, Marion De Vries, and George E. Martin, associate judges.

The court was opened for business in due form.

No. 1346.

The M. H. Pulaski Co., Johnson & Faulkner, John Pullman & Co., appellants,
v.
The United States, appellee.

No. 1353.

R. B. Henry Co., Wiener Brothers, Lehn & Fink, W. A. Taylor & Co., J. S. Plummer & Co., Mecke & Co., J. Wile Sons & Co., appellants,
v.
The United States, appellee.

No. 1355.

J. Elliott & Co., Samstag & Hilder Brothers, appellants,
v.
The United States, appellee.

No. 1364.

Robert Muller & Co., appellant,
v.
The United States, appellee.

Said appeals having heretofore been brought on to be heard before the court and due consideration thereon having been had, it is ordered—

(1) That the merchandise involved in these cases, imported in the registered vessels of the United States, is entitled to the five per cent discount as held by the Board of United States General Appraisers, whose decision relating thereto is hereby affirmed.

(2) That as to the merchandise imported in the registered vessels of the said treaty nations, both that which was imported and entered for consumption subsequent to the taking effect of the tariff act of 1913, as well as that which was brought to our ports prior thereto and entered in bond for warehousing, subsequently withdrawn for consumption and duties paid, the five per cent discount must be allowed, and with respect to such merchandise the decision of said board is hereby reversed.

No. 1370.

Wood & Selick, Louis Meyers & Son, appellants,

v.

The United States, appellee.

No. 1391.

The United States, appellant,

v.

J. Wile Sons & Co., appellee.

No. 1392.

The United States, appellant,

v.

G. W. Faber, Inc., appellee.

No. 1393.

The United States, appellant,

v.

Louis Meyers & Son, appellee.

No. 1394.

The United States, appellant,

v.

William Openhym & Sons, A. Wimpfheimer & Bro., appellees.

No. 1395.

The United States, appellant,

v.

Park & Tilford, appellee.

No. 1396.

The United States, appellant,

v.

Selgas & Co., appellee.

No. 1399.

E. La Montagne's Sons, appellants,

v.

The United States, appellee.

(3) That the merchandise imported in vessels of our registry before the tariff act of 1913 took effect which was entered in bond for warehousing, subsequently withdrawn and entered for consumption and duties paid, is entitled to the five per cent discount thereon, and the decision of said board with respect thereto is reversed.

(4) That the merchandise from Cuba is entitled to the reduction of twenty per centum ad valorem provided by the Cuban treaty, and the further discount of five per centum ad valorem from the amount so ascertained. As to such importations the decision of said board is hereby affirmed.

And said appeals are remanded to said board for proper action in the premises.

De Vries, associate judge, dissents.

No. 1410.

Cullman Brothers, E. Rosenwald & Bro., appellants,
v.
The United States, appellee.

No. 1440.

A. Lorsch & Co., Henry Glass & Co., F. L. Kraemer & Co., L. D. Bloch & Co., A. Leipzig, Inc., A. J. Dale, appellants,
v.
The United States, appellee.

* * * * * * * *

(Signed) ROBERT M. MONTGOMERY,
Presiding Judge.

11 United States Court of Customs Appeals.

E. LA MONTAGNE'S SONS, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 1399.

For the opinion of the court in the above entitled appeal see transcript of record in the case of R. B. Henry Co. et al., appellants, v. The United States, appellee, No. 1353.

12 United States Court of Customs Appeals.

E. LA MONTAGNE'S SONS, APPELLANT,
vs.
THE UNITED STATES, APPELLEE. } No. 1399.

I, Arthur B. Shelton, Clerk of the United States Court of Customs Appeals, do hereby certify that the attached pages contain a true and complete transcript of the record and proceedings had in said court in the above entitled appeal, as the same remain of record and on file in this office.

Witness my hand and the seal of this court, this 11th day of June, A. D. 1915.

[SEAL.] ARTHUR B. SHELTON,
Clerk.

13 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the United States Court of Customs Appeals, greeting:

[SEAL.]

Being informed that there is now pending before you a suit in which E. La Montagne's Sons are appellants and the United States

is appellee, No. 1399, which suit was removed into the said Court of Customs Appeals by virtue of an appeal from the Board of United States General Appraisers, and we, being willing for certain reasons that the said cause and the record and proceeding therein should be certified by the said Court of Customs Appeals and removed
14 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty-fourth day of June, in the year of our Lord one thousand nine hundred and fifteen.

JAMES D. MAHER,
Clerk of the Supreme Court of the United States.

15 File No. 24,783. Supreme Court of the United States, No. 1039, October Term, 1914. The United States *vs.* E. La Montagne's Sons. Writ of certiorari.

16 In the Supreme Court of the United States.

October term, 1914.

THE UNITED STATES, PETITIONER,
v.
E. LA MONTAGNE'S SONS. } No. 1039.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record on file in the Supreme Court shall constitute the return of the clerk of the Court of Customs Appeals to the writ of certiorari issued herein.

JNO. W. DAVIS,
Solicitor General.
B. A. LEVETT,
Counsel for Respondents.

JUNE 25, 1915.

Field June 25, 1915. United States Court of Customs Appeals, Arthur B. Shelton, clerk.

17 Return to writ.

United States Court of Customs Appeals.

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true, and complete copy of which is hereto attached, I hereby certify that the

transcript of record furnished with the application for a writ of certiorari in the case of E. La Montagne's Sons v. The United States, No. 1399, is a full, true, and complete transcript of the record and proceedings in said appeal.

In testimony whereof I hereunto subscribe my name and affix the seal of the United States Court of Customs Appeals this twenty-sixth day of June, A. D. 1915.

[SEAL.] ARTHUR B. SHELTON,
Clerk of the United States Court of Customs Appeals.

(Stamped: Office of the clerk Supreme Court U. S. Received June 29, 1915.)

18 File No. 24,783. Supreme Court U. S. October term, 1915. Term No. 502. The United States, petitioner, vs. E. La. Montagne's Sons. Writ of certiorari and return. Filed June 29, 1915.

19 File No. 24,783. U. S. Court of Customs Appeals. Term No. 502. The United States, petitioner, vs. E. La Montagne's Sons. Petition for writ of certiorari and exhibit thereto and waiver of notice of submission. Filed June 12, 1915. File No. 24,783.

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